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AN ACT

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RELATING TO LAW ENFORCEMENT; PROVIDING FOR THE DNA IDENTIFICATION OF MISSING PERSONS, UNIDENTIFIED PERSONS AND UNIDENTIFIED HUMAN REMAINS; AMENDING AND ENACTING SECTIONS OF THE DNA IDENTIFICATION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the DNA Identification Act is enacted to read:

"EXPUNGEMENT OF SAMPLES AND DNA RECORDS.--

A. A person may request expungement of his sample and DNA records from the missing persons DNA identification system.

B. The administrative center shall expunge a person's sample and DNA records from the missing persons DNA identification system when the person provides the administrative center with the following materials:

(1) a written request for expungement of his sample and DNA records; and

(2) if applicable, a certified copy of a court order that overturns the original search warrant or court order that led to the inclusion of his sample and DNA records in the missing persons DNA identification system.

C. When a person's sample and DNA records are expunged from the missing persons DNA identification system, the head of the administrative center shall ensure that the person's sample and DNA records are expunged from CODIS."

Section 2. A new section of the DNA Identification Act is enacted to read:

"REIMBURSEMENT OF COSTS.--

A. When the DNA testing of samples listed in Section 29-16-6 NMSA 1978 is required, the administrative center shall be reimbursed for the costs of the sample collection and DNA testing:

(1) of unidentified persons by the investigating law enforcement agency;

1 (2) of unidentified human remains by the state medical SB  
2 investigator or by the investigating law enforcement agency; and  
3 (3) for relatives of, or known reference samples from, a missing 1  
4 person by the relatives of the missing person or by the investigating law enforcement 5  
5 agency. 7  
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7 B. Reimbursements shall be deposited in the fund." Section 3. A new 9  
8 section of the DNA Identification Act is enacted to read: e  
9 "DNA SEARCHES.-- 2

10 A. Searches of samples collected pursuant to the DNA Identification  
11 Act, for purposes of the missing persons DNA identification system, shall be limited to  
12 searches against DNA indexes consisting of:

- 13 (1) unidentified persons;
- 14 (2) unidentified human remains;
- 15 (3) relatives of, or known reference samples from, missing  
16 persons; and

17 (4) covered offenders as defined by the DNA Identification Act  
18 and maintained by the DNA identification system.

19 B. Searches of samples collected from unidentified persons or  
20 relatives of missing persons pursuant to the DNA Identification Act shall not be  
21 performed against DNA indexes consisting of evidentiary samples resulting from  
22 criminal investigations."

23 Section 4. Section 29-16-1 NMSA 1978 (being Laws 1997, Chapter 105,  
24 Section 1) is amended to read:

25 "29-16-1. SHORT TITLE.--Chapter 29, Article 16 NMSA 1978 may be cited as  
the "DNA Identification Act"."

Section 5. Section 29-16-2 NMSA 1978 (being Laws 1997, Chapter 105,  
Section 2) is amended to read:

"29-16-2. PURPOSE OF ACT.--The purpose of the DNA Identification Act is to:  
A. establish a DNA identification system for covered offenders;

1 B. facilitate the use of DNA records by local, state and federal law enforcement agencies in the identification, detection or exclusion of persons in connection with criminal investigations;

2  
3 C. establish a missing persons DNA identification system consisting of the following DNA indexes:

- 4 (1) unidentified persons;
- 5 (2) unidentified human remains; and
- 6 (3) relatives of, or known reference samples from, missing persons; and

7  
8 D. facilitate the use of DNA records by local, state and federal law enforcement agencies and the state medical investigator in the identification and location of missing and unidentified persons or human remains."

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10 Section 6. Section 29-16-3 NMSA 1978 (being Laws 1997, Chapter 105, Section 3) is amended to read:

11 "29-16-3. DEFINITIONS.--As used in the DNA Identification Act:

12 A. "administrative center" means the law enforcement agency or unit that administers and operates the DNA identification system;

13 B. "DNA oversight committee" means the DNA identification system oversight committee;

14 C. "CODIS" means the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by forensic DNA laboratories;

15 D. "covered offender" means any person convicted of a felony offense as an adult under the Criminal Code, the Motor Vehicle Code or the constitution of New Mexico or convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code;

16 E. "department" means the department of public safety;

17 F. "DNA" means deoxyribonucleic acid as the basis of human heredity;

18 G. "DNA identification system" means the DNA identification system

1 established pursuant to the DNA Identification Act;

2 H. "DNA records" means the results of DNA testing and related  
3 information;

4 I. "DNA testing" means a forensic DNA analysis that includes restriction  
5 fragment length polymorphism, polymerase chain reaction or other valid methods of  
6 DNA typing performed to obtain identification characteristics of samples;

7 J. "fund" means the DNA identification system fund;

8 K. "missing persons DNA identification system" means the missing  
9 persons DNA identification system established by the DNA Identification Act; and

10 L. "sample" means a sample of biological material sufficient for DNA  
11 testing."

12 Section 7. Section 29-16-4 NMSA 1978 (being Laws 1997, Chapter 105,  
13 Section 4) is amended to read:

14 "29-16-4. ADMINISTRATIVE CENTER--POWERS AND DUTIES--TRANSFER  
15 TO OTHER LAW ENFORCEMENT AGENCY.--

16 A. The administrative center shall be an appropriate unit of the  
17 department or such other qualified New Mexico law enforcement agency as the  
18 secretary of public safety may designate in accordance with this section.

19 B. The administrative center shall:

20 (1) establish and administer the DNA identification system.

21 The DNA identification system shall provide for collection, storage, DNA testing,  
22 maintenance and comparison of samples and DNA records for forensic and  
23 humanitarian purposes. Those purposes shall include generation of investigative  
24 leads, statistical analysis of DNA profiles and identification of missing persons and  
25 unidentified human remains. Procedures used for DNA testing shall be compatible  
with the procedures the federal bureau of investigation has specified, including  
comparable test procedures, laboratory equipment, supplies and computer software.  
Procedures used shall meet or exceed the provisions of the federal DNA Identification  
Act of 1994 regarding minimum standards for state participation in CODIS, including

1 minimum standards for the acceptance, security and dissemination of DNA records;  
2 (2) coordinate sample collection activities;  
3 (3) perform or contract for DNA testing;  
4 (4) serve as a repository for samples and DNA records;  
5 (5) act as liaison with the federal bureau of investigation for  
purposes of CODIS;  
6 (6) adopt rules and procedures governing:  
7 (a) sample collection;  
8 (b) DNA testing;  
9 (c) the DNA identification system and DNA records; and  
10 (d) the acceptance, security and dissemination of DNA  
11 records;  
12 (7) be reimbursed for, pursuant to the DNA Identification Act,  
13 the costs of sample collection and DNA testing of samples taken for the purposes of  
14 the identification of missing persons and unidentified human remains; and  
15 (8) establish and administer the missing persons DNA  
16 identification system as a part of the DNA identification system.  
17 C. The secretary of public safety may designate, pursuant to a joint  
18 powers agreement, the crime laboratory of the police department for the largest  
19 municipality in a class A county having a population of more than two hundred fifty  
20 thousand at the most recent federal decennial census to act as the administrative  
21 center.  
22 D. The secretary of public safety may designate, pursuant to a joint  
23 powers agreement, any other law enforcement agency to act as administrative center  
24 upon recommendation of five voting members of the DNA advisory committee."  
25 Section 8. Section 29-16-5 NMSA 1978 (being Laws 1997, Chapter 105,  
Section 5) is amended to read:  
"29-16-5. DNA OVERSIGHT COMMITTEE--CREATED--POWERS AND  
DUTIES.--

1                   A. The "DNA identification system oversight committee" is created.  
2   The DNA oversight committee shall be composed of nine voting members as follows:  
3                   (1) a scientific representative from the department crime  
4   laboratory appointed by the secretary of public safety;  
5                   (2) a scientific representative from the crime laboratory of the  
6   police department for the largest municipality in a class A county having a population  
7                   (3) the secretary of corrections or his designated  
8   representative;  
9                   (4) the state medical investigator or his designated  
10   representative;  
11                   (5) the attorney general or his designated representative;  
12                   (6) the president of the district attorneys association or his  
13   designated representative;  
14                   (7) the chief public defender or his designated representative;  
15                   (8) the president of the New Mexico criminal defense lawyers  
16   association or his designated representative; and  
17                   (9) the head of the administrative center or his designated  
18   representative.  
19                   B. The DNA oversight committee shall adopt rules and procedures  
20   regarding the administration and operation of the DNA identification system.  
21                   C. The administrative center shall review and make recommendations  
22   to the DNA oversight committee regarding rules and procedures for the administration  
23   and operation of the DNA identification system.  
24                   D. The DNA oversight committee shall oversee the establishment and  
25   administration of the missing persons DNA identification system as part of the DNA  
  identification system.  
                  E. The DNA oversight committee shall adopt rules and procedures  
  regarding the administration and operation of the missing persons DNA identification

1 system as part of the DNA identification system."

2 Section 9. Section 29-16-6 NMSA 1978 (being Laws 1997, Chapter 105,  
3 Section 6) is amended to read:

4 "29-16-6. COLLECTION OF SAMPLES.--

5 A. A covered offender shall provide one or more samples to the  
6 administrative center, as follows:

7 (1) a covered offender convicted on or after July 1, 1997 shall  
8 provide a sample immediately upon request of the corrections department so long as  
9 the request is made before release from any correctional facility or, if the covered  
10 offender is not sentenced to incarceration, before the end of any period of probation  
11 or other supervised release;

12 (2) a covered offender incarcerated on or after July 1, 1997  
13 shall provide a sample immediately upon request of the corrections department so  
14 long as the request is made before release from any correctional facility; and

15 (3) a covered offender on probation or other supervised  
16 release on or after July 1, 1997 shall provide a sample immediately upon request of  
17 the corrections department so long as the request is made before the end of any  
18 period of probation or other supervised release.

19 B. Samples from unidentified persons or relatives of a missing person  
20 shall be provided to the administrative center, as follows:

21 (1) upon the completion of a permission to search form  
22 authorizing the collection of a DNA sample;

23 (2) upon the receipt of a properly executed search warrant; or

24 (3) upon the issuance of a court order.

25 C. Samples from unidentified human remains shall be provided by the  
state medical investigator.

D. Samples of known reference materials from missing persons shall  
be provided by the investigating law enforcement agency."

Section 10. Section 29-16-7 NMSA 1978 (being Laws 1997, Chapter 105,

1 Section 7) is amended to read:

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2 "29-16-7. PROCEDURES FOR COLLECTION OF SAMPLES.--

3 A. The collection of samples pursuant to the provisions of Section  
4 29-16-6 NMSA 1978 shall be conducted in a medically approved manner in  
5 accordance with rules and procedures adopted by the DNA oversight committee.

6 B. A person who collects samples shall be trained in procedures that  
7 meet the requirements and standards specified in Subsection A of this section.

8 C. A person authorized to collect samples and his employer shall be  
9 immune from liability in any civil or criminal action with regard to the collection of  
10 samples, if the collection is performed without negligence. This subsection shall not  
11 be deemed to create any additional liability or waive any immunity of public employees  
12 under the Tort Claims Act.

13 D. Samples shall be stored in accordance with rules and procedures  
14 adopted by the administrative center.

15 E. DNA testing shall be performed by the administrative center or a  
16 contract facility it may designate.

17 F. DNA records and samples shall be securely classified and stored by  
18 the administrative center."

19 Section 11. Section 29-16-8 NMSA 1978 (being Laws 1997, Chapter 105,  
20 Section 8) is amended to read:

21 "29-16-8. CONFIDENTIALITY--DISCLOSURE AND DISSEMINATION OF DNA  
22 RECORDS.--

23 A. DNA records and samples are confidential and shall not be  
24 disclosed except as authorized in the DNA Identification Act pursuant to the rules and  
25 regulations developed and adopted by the DNA oversight committee.

26 B. The administrative center shall make DNA records available for  
27 identification, comparison and investigative purposes to local, state and federal law  
28 enforcement agencies and the state medical investigator pursuant to the rules  
29 developed and adopted by the DNA oversight committee. The administrative center

1 may disseminate statistical or research information derived from samples and DNA  
2 testing if all personal identification is removed pursuant to the rules developed and  
3 adopted by the DNA oversight committee."

4 Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act  
5 is July 1, 2003.

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